

PRACTICE DIRECTION

DERIVATIVE CLAIMS

This Practice Direction supplements CPR Part 19

APPLICATION OF THIS PRACTICE DIRECTION

- 1** This practice direction –
- (a) applies to –
 - (i) derivative claims, whether under Chapter 1 of Part 11 of the Companies Act 2006 or otherwise; and
 - (ii) applications for permission to continue or take over such claims; but
 - (b) does not apply to claims in pursuance of an order under section 994 of that Act.

CLAIM FORM

- 2**
- (1) A claim form must be headed 'Derivative claim'.
 - (2) If the claimant seeks an order that the defendant company or other body concerned indemnify the claimant against liability for costs incurred in the permission application or the claim, this should be stated in the permission application or claim form or both, as the case requires.

APPLICATION FOR ORDER DELAYING NOTICE

- 3** If the applicant seeks an order under rule 19.9A(7) delaying notice to the defendant company or other body concerned, the applicant must also –
- (a) state in the application notice the reasons for the application; and
 - (b) file with it any written evidence in support of the application.

FORM TO BE SENT TO DEFENDANT COMPANY OR OTHER BODY

- 4** The form required by rule 19.9A(4)(a) to be sent to the defendant company or other body is set out at the end of this practice direction. There are separate versions of the form for claims involving a company, and claims involving a body corporate of another kind or a trade union.

EARLY INTERVENTION BY THE COMPANY

- 5** The decision whether the claimant's evidence discloses a *prima facie* case will normally be made without submissions from or (in the case of an oral hearing to reconsider such a decision reached pursuant to rule 19.9A(9)) attendance by the company. If without invitation from the court the company volunteers a submission or attendance, the company will not normally be allowed any costs of that submission or attendance.

(Sections 261, 262 and 264 of the Companies Act 2006 contain provisions about disclosing a prima facie case in applications to continue a derivative claim.)

HEARING OF APPLICATIONS ETC.

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- (1) Where a permission application to which this practice direction applies is made in the High Court it will be assigned to the Chancery Division and decided by a High Court judge.
- (2) Where such an application is made in a county court it will be decided by a circuit judge.

DISCONTINUANCE OF DERIVATIVE CLAIM

- 7 As a condition of granting permission to continue or take over a derivative claim, the court may order that the claim is not to be discontinued, settled or compromised without the court's permission. Such a condition may be appropriate where any future proposal to discontinue or settle might not come to the attention of members who might have an interest in taking over the claim.

TRANSITIONAL PROVISIONS

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- (1) From 1st October 2007 new rules came into force about procedures for derivative claims. The new rules are set out in CPR rules 19.9 to 19.9F.
- (2) The rules of court in force immediately before 1st October 2007 apply to derivative claims begun before 1st October 2007. These (former CPR rule 19.9) are set out below:

Derivative Claims

- 19.9 (1) This rule applies where a company, other incorporated body or trade union is alleged to be entitled to claim a remedy and a claim is made by one or more members of the company, body or trade union for it to be given that remedy (a 'derivative claim').
- (2) The company, body or trade union for whose benefit a remedy is sought must be a defendant to the claim.
- (3) After the claim form has been issued the claimant must apply to the court for permission to continue the claim and may not take any other step in the proceedings except—
(a) as provided by paragraph (5); or
(b) where the court gives permission.
- (4) An application in accordance with paragraph (3) must be supported by written evidence.
- (5) The—
(a) claim form;
(b) application notice; and
(c) written evidence in support of the application,
must be served on the defendant within the period within which the claim form must be served and, in any event, at least 14 days before the court is to deal with the application.
- (6) If the court gives the claimant permission to continue the claim, the time within which the defence must be filed is 14 days after the date on which the permission is given or such period as the court may specify.
- (7) The court may order the company, body or trade union to indemnify the claimant against any liability in respect of costs incurred in the claim.”.

The forms

For claims involving a company:

Companies Act 2006, section 261 or 262 or 264

Civil Procedure Rules 1998, rule 19.9A(4)(c)

Notice in relation to derivative claim

To {name of company etc} ("the company") in relation to a claim by

{claimant}

Attached to this notice are:

- a copy of the claim form to which this notice relates;
- an application under rule 19.9A of the Civil Procedure Rules 1998 for permission to continue the claim; and
- copies of the evidence to be relied on by the claimant in obtaining permission to continue the claim.

The claim is a derivative claim. The claimant must obtain the permission of the court under section 261 of the Companies Act 2006 to continue the claim. A brief summary of the procedure follows.

The court will make its initial decision on the basis of the evidence filed by the claimant (copies are attached to this notice) and at present the company does not need to acknowledge service, file a defence or become involved in any other way. Initially the court may make its decision on the documents only, without a hearing; if it dismisses the application, the claimant may request reconsideration of that decision at a hearing but even at that hearing no additional evidence will be taken into account. If the court considers that the evidence filed by the claimant does not disclose a prima facie case, it must dismiss the application. It may then make consequential orders. If it does not dismiss the application at that stage, the court will adjourn the application to allow the company to obtain and file evidence and be heard on the application, and will make any necessary orders.

The court will notify the company of the outcome of each stage of the process.

The factors that the court must take into account are set out in section 263 of the Act. A copy of sections 263(1) to (4) of the Act is attached.

For claims involving a body corporate that is not a company, or a trade union:

Civil Procedure Rules 1998, rule 19.9A(4)(c)

Notice in relation to derivative claim

To {name of body corporate etc} ("the corporation") {or as appropriate} in relation to a claim by

{claimant}

Attached to this notice are:

- a copy of the claim form to which this notice relates;
- an application under rule 19.9A of the Civil Procedure Rules 1998 for permission to continue the claim; and
- copies of the evidence to be relied on by the claimant in obtaining permission to continue the claim.

The claim is a derivative claim. Under the Civil Procedure Rules 1998, the claimant must obtain the permission of the court to continue the claim. A brief summary of the procedure follows.

The court will make its initial decision on the basis of the evidence filed by the claimant (copies are attached to this notice) and at present the [corporation] does not need to acknowledge service, file a defence or become involved in any other way. Initially the court may make its decision on the documents only, without a hearing; if it dismisses the application, the claimant may request reconsideration of that decision at a hearing but even at that hearing no additional evidence will be taken into account. If the court considers that the evidence filed by the claimant does not disclose a prima facie case, it will dismiss the application. It may then make consequential orders. If it does not dismiss the application at that stage, the court will adjourn the application to allow the corporation to obtain and file evidence and be heard on the application, and will make any necessary orders.

The court will notify the [corporation] of the outcome of each stage of the process."

